Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Policy and Rules Concerning	)	
the Interstate, Interexchange Marketplace	)	CC Docket No. 96-61
	)	
Implementation of Section 254(g) of the	)	
Communications Act of 1934, as amended	)	

OPPOSITION OF THE STATE OF HAWAII

The State of Hawaii (the "State")[1] hereby opposes the application for review of IT&E Overseas, Inc. ("IT&E") filed on August 29, 1997 in the above-captioned proceeding. In its July 30, 1997 Memorandum Opinion and Order, the Common Carrier Bureau correctly ruled that Section 254(g)'s rate integration requirement both: (1) applies to private line services and temporary promotions; and (2) prohibits interexchange rates that vary based on the terminating location of a call.[2] IT&E's application for review reflects a fundamental misunderstanding of the public policy rationale behind Section 254(g), fails to appreciate the difference between geographic rate averaging and rate integration principles, and underscores

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[1] This opposition is submitted by the State of Hawaii acting through its Department of Commerce and Consumer Affairs.

[2] Policy and Rules Concerning the Interstate, Interexchange Marketplace -- Implementation of Section 254(g) of the Communications Act of 1934, as amended, CC Docket No. 96-61, DA No. 97-1628, at ¶¶ 19-20 (rel. July 30, 1997).

the need for the Commission to grant the State's "Petition for Clarification and Reconsideration" of the First Report and Order in this docket.[3]

I. SECTION 254(g)'S RATE INTEGRATION REQUIREMENT APPLIES TO BOTH PRIVATE LINE SERVICES AND TEMPORARY PROMOTIONS

IT&E argues, without any support or rationale, that private line services and temporary promotions should be exempted from Section 254(g)'s rate integration requirement because the Commission had granted such services a limited exemption from the geographic rate averaging rule.[4] IT&E fails to understand that geographic rate averaging and rate integration are fundamentally different principles. Geographic rate averaging requires a carrier to charge the same rate between any two points where the distance is the same. In contrast, rate integration requires a carrier to implement the same rate structure it uses for calls to or from offshore points as it uses for its mainland services.

For example, even if a carrier is allowed to charge a higher rate for calls in high-cost areas (because of forbearance from geographic rate averaging), a carrier would still not, for example, be permitted to offer a postalized rate within the continental United States ("CONUS"), but a distance-sensitive rate to offshore points. Rate integration simply does not allow a carrier to have a CONUS rate structure that treats high-cost and low-cost areas the same and an offshore rate structure that treats high-cost areas differently. As the Commission explained in its First

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[3] Policy and Rules Concerning the Interstate, Interexchange Marketplace -- Implementation of Section 254(g) of the Communications Act of 1934, as amended, 11 FCC Rcd 9564 (1996) ("First Report and Order"). The State's "Petition for Clarification and Reconsideration" of the First Report and Order was filed on September 16, 1996.

[4] IT&E Application for Review at 8.

Report and Order, an integrated rate structure requires "IXCs to lower the rates in the newly integrated areas to levels comparable to those prevailing in the mainland for interexchange calls of similar distance, duration, and time of day."[5] In its "Petition for Clarification and Reconsideration," the State expressed its concern that carriers such as IT&E would confuse the two principles of rate averaging and rate integration and mistakenly believe that forbearance from one principle would mean forbearance from both:

> [T]he Commission should clarify that rate integration requires a carrier to use the same ratemaking methodologies for the same services throughout its service area even if the Commission has forborne from requiring those rates to be geographically deaveraged. Since there was no forbearance with respect to rate integration, it should be made clear that if a carrier's promotional discount . . . or private line service employs one structure for Mainland traffic, then the carrier must employ the same rate structure for offshore points. This rule would apply regardless of the geographic location of the customer for the service.[6]

In its First Report and Order, the Commission expressly did not forbear from the rate integration principle for any service.[7] Specifically, the Commission stated that:

> to the extent that a provider of interexchange service offers optional calling plans, contract tariffs, discounts, promotions, and private line services to its subscribers on the mainland, it should use the same ratemaking methodology and rate structure when offering those services to its subscribers in Guam or the Northern Marianas. In addition, we do not view rate integration as inconsistent with flexibility and competitive responses by carriers,

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[5] First Report and Order, 11 FCC Rcd at 9586 & n.101.

[6] "Petition for Clarification and Reconsideration of the State of Hawaii" at 5 (filed Sep. 16, 1996).

[7] First Report and Order, 11 FCC Rcd at 9588-89.

> although carriers must continue to comply with rate integration requirements for these offshore points.[8]

During the comment period leading up to the First Report and Order, IT&E had expressly urged the Commission to exempt it and other small IXCs from rate integration, and the Commission had expressly denied IT&E's request.[9] IT&E's application for review is, in essence, an untimely petition for reconsideration of the Commission's First Report and Order on the rate integration issue and, therefore, should be denied.[10] It has raised no new issues.

II. SECTION 254(g)'S RATE INTEGRATION REQUIREMENT PROHIBITS INTEREXCHANGE RATES THAT VARY BASED ON THE TERMINATING LOCATION OF A CALL

IT&E argues that it should be allowed to discriminate in the rates it charges based on the terminating location of a call.[11] Such discrimination against offshore points is prohibited by both the express language of Section 254(g) and Commission precedent. Section 254(g) expressly states that "a provider of interstate interexchange telecommunications services shall provide such services to its subscribers in each State at rates no higher than the rates charged

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[8] Id. at 9596-97 (emphasis added).

[9] Id. at 9598.

[10] Sprint similarly confused the two principles back in October 1996. In its reply comments, the State noted that "[i]f Sprint believes that carriers should be able to define ratemaking methodologies on a region-by-region basis to meet competition, it is, in essence, seeking reconsideration of the Commission' decision not to forbear from the rate integration requirement. . . . Sprint's ill-defined opposition demonstrates the need for the Commission to clarify that the rate integration requirement applies even where rates are deaveraged." "Reply of the State of Hawaii" at 8-9 (filed Nov. 5, 1996).

[11] IT&E Application for Review at 2-7.

to its subscribers in any other State."[12] This means that if an IXC provides service between, say, Illinois and California, it must provide Illinois-California service to both Illinois and California residents at the same rate. Or, if a carrier offers a caller in California 20 cents per minute to originate a call to his friend in Hawaii, the carrier is required to charge the caller in Hawaii the same 20-cent rate to originate a call to his friend in California.

In the First Report and Order, the Commission makes clear that rate integration applies both to originating and terminating calls. The Commission noted that "[i]n 1976, the Commission required carriers that offered message toll, private line, and specialized services to or from Alaska, Hawaii, Puerto Rico, and the Virgin Islands to integrate their rates for those services into the rate structures and uniform mileage rate patterns applicable to the mainland."[13] By using the prepositional phrase "to or from" rather than just "from," the Commission clearly indicates that rate integration applies to both originating and terminating calls.[14]

IT&E claims that the Commission's rate integration policy prior to implementation of Section 254(g) freely permitted IXCs to vary rates based on the call termination location.[15] As "evidence," IT&E provides tariff pages from AT&T and MCI showing that these carriers maintained a separate rate schedule for calls between the mainland/Hawaii and Puerto Rico/Virgin Islands. These tariffs prove nothing. First, the separate rate schedules do not

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[12] 47 U.S.C. § 254(g).

[13] First Report and Order, 11 FCC Rcd at 9586 (emphasis added).

[14] See Referral of Questions from General Communications Inc. v. Alascom Inc., 2 FCC Rcd 6479, 6481 (1987) ("The rate integration policy was developed to provide . . . service to and from Alaska at rates comparable to those prevailing in the contiguous states for calls of similar distance, duration, and time of day.") (emphasis added).

[15] IT&E Application for Review at 5.

distinguish between originating and terminating calls, but apply to all calls between these points, whether they originate in the mainland/Hawaii or in Puerto Rico/Virgin Islands. Furthermore, as the Common Carrier Bureau pointed out, the separate rate schedules are more form than substance, "generally cover[ing] distances that match appropriate mileage bands used for calls within the mainland and Hawaii and reflect the rates for those mileage bands."[16] Lastly, and most importantly, Section 254(g) extended the policy of rate integration beyond what was required under the Commission's old policy, and therefore whatever AT&T was permitted to charge in its old tariffs is irrelevant to what is required from all IXCs today.

There are myriad examples demonstrating that Section 254(g) extends rate averaging and rate integration principles beyond what was previously required. For example, under the pre-Section 254(g) regime, AT&T had been allowed to offer promotions lasting longer than 90 days. Under the Section 254(g) regime, in contrast, the Commission determined that a maximum promotion term of 90 days "best implements the statutory mandate for geographic averaging."[17] The Commission also noted that "the 1996 Act extends rate integration to U.S. territories and possessions, including Guam and the Northern Marianas, because rate integration obligations apply to providers of interexchange services between 'states.'"[18]

In its "Petition for Clarification and Reconsideration," the State urged the Commission to clarify that the enactment of Section 254(g) did not merely incorporate the

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[16] Policy and Rules Concerning the Interstate, Interexchange Marketplace -- Implementation of Section 254(g) of the Communications Act of 1934, as amended, CC Docket No. 96-61, DA No. 97-1628, at ¶ 5 n.13 (rel. July 30, 1997).

[17] First Report and Order, 11 FCC Rcd at 9578 (emphasis added).

[18] Id. at 9589.

Commission's previous rate averaging and rate integration policies it had applied to AT&T but significantly expanded these policies as part of a national commitment to advance universal service. The State argued that the legislative history of Section 254(g):

> recognizes that geographic averaging is a stand-alone ratemaking policy. . . . Indeed, had Congress intended simply to keep in place the status quo -- i.e., codifying the Commission's application of the rate averaging principle -- it could have easily done so without the broad language of the statute or the carefully crafted language of the legislative history.[19]

The Commission, therefore, should not judge the validity of IT&E's discriminatory proposal to vary rates by call termination location based on tariffs filed by AT&T and MCI prior to implementation of Section 254(g).[20] Rather, the Commission should look towards the plain language of Section 254(g) and its legislative history, which clearly prohibit IT&E's discriminatory proposal.

IT&E also argues that the Common Carrier Bureau's decision to prohibit rates that vary by call termination location "reflects a basic mistrust of the competitive forces driving the domestic interstate, interexchange market and thus undermines the Commission's fundamental rationale for deregulating such market."[21] This assertion reflects absolutely no appreciation for the goal of universal service. As both the State and Alaska argued in the comment period leading up to the First Report and Order, the 1996 Act's intent was to balance the goal of

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[19] "Petition for Clarification and Reconsideration of the State of Hawaii" at 7-8 (filed Sep. 16, 1996).

[20] The fact that the Commission may not have passed upon violations of rate integration principles by carriers in the past cannot be used as justification for carriers to breach these principles now.

[21] IT&E Application for Review at 7.

promoting competition with other goals such as universal service.[22] The State argued that "competition is only one of several considerations under Section 10's forbearance test, and in no case can broad claims about promoting competition alone justify forbearance in these circumstances."[23]

The Commission reached the same conclusion in its January 17, 1997 order rejecting AT&T's petition for waiver of Section 254(g), ruling that any increased regional competition that deaveraging would promote does not "outweigh the benefits of the national policy of geographic averaging embodied in section 254(g) of the Act and our implementing regulations."[24] Competition, because it brings rates closer to cost, actually makes rate disparities between high-cost and low-cost areas worse. The very purpose of geographic rate averaging and rate integration is to promote universal service by, if necessary, subsidizing the high costs of providing telephone service in rural and other high-cost areas with revenues from low-cost areas. Such cross-subsidies ameliorate the impact which regionally disparate costs otherwise impose on consumers in different parts of the country. Congress enacted Section 254(g) specifically to protect consumers in high-cost areas from such rate disparities.

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[22] First Report and Order, 11 FCC Rcd at 9581-82 & nn.79, 85.

[23] "Reply Comments of the State of Hawaii" at 3 (filed May 3, 1996); see also "Reply Comments of the State of Alaska" at 4 (filed May 3, 1996) ("If competition was the 'be all and end all' of telecommunications policy, there would be no section 254(g), there would be no universal service provisions in the telecommunications Act, and there would be no need for the Commission to do anything other than allocate spectrum.").

[24] AT&T's Corp.'s Petition for Waiver and Request for Expedited Consideration, 12 FCC Rcd 934, 939 (1997).

III. CONCLUSION

In its July 30, 1997 Memorandum Opinion and Order, the Common Carrier Bureau correctly ruled that Sections 254(g)'s rate integration requirement both: (1) applies to private line services and temporary promotions; and (2) prohibits interexchange rates that vary based on the terminating location of a call. For all the reasons mentioned above, and for the reasons mentioned in the State's past pleadings in this docket, the Commission should DENY IT&E's application for review.

Respectfully submitted,

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STATE OF HAWAII

September 15, 1997

CERTIFICATE OF SERVICE

I, James M. Fink, do hereby certify that on this 15th day of September, 1997, I have caused a copy of the foregoing "Opposition of the State of Hawaii" in CC Docket No. 96-61 to be served via first class United States Mail, postage pre-paid, upon the persons listed below.

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